

TIMOTHY C. BRADY
Claimant

BOEING COMPANY
Respondent

**INSURANCE COMPANY STATE OF
PENNSYLVANIA**
Insurance Carrier

ORDER

ISSUES

On appeal, respondent contends claimant failed to prove he suffered an accidental injury arising out of his employment with respondent. Furthermore, respondent argues claimant failed to give respondent timely notice of the accident. Lastly, the respondent contends that the ALJ exceeded his jurisdiction by ordering respondent to pay all outstanding medical bills as authorized medical expense because claimant failed to admit into the preliminary hearing record any evidence of the medical expenses.

In contrast, claimant requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Board finds the preliminary hearing Order should be affirmed.

Although the respondent, as noted above, raised other issues, the only issue the respondent argued in its brief was the timely notice issue. Respondent argues claimant's request for compensation benefits should be denied because claimant failed to prove he gave respondent timely notice of the accident within 10 days after the date of accident.¹

Claimant testified he did not recall the specific date, but alleges that sometime between June 10, 2000, and June 25, 2000, he was carrying a cargo door frame back to his work station when he slipped on either fluid or oil on the floor. He did not fall to the floor but was able to catch himself with his right arm. The first symptom he noticed was pain in a knee that he had previously injured and that was bent back when he slipped.

Another employee saw claimant slip and asked claimant if he was alright. This employee further inquired whether claimant was going to tell his supervisor, Lonnie Hack, about the slipping incident. Claimant testified he was not going to mention the incident to his supervisor because he did not at that time feel that he had suffered an injury. But claimant did decide to tell his supervisor and went over to his supervisor's cubicle office. Mr. Hack was in the office busy working when claimant told him that he had slipped on some oil carrying a cargo frame. Claimant testified that Mr. Hack did not respond to his conversation but continued to work.

Claimant testified that after the slipping incident, he started to have pain in his lower back. Because of this continuing pain, claimant first sought medical treatment with his personal family physician on July 7, 2000. Claimant's personal physician is an osteopathic physician who treated claimant's low back with manipulations, medication and physical therapy. But claimant's low back pain persisted.

On October 3, 2000, claimant underwent an MRI examination that showed a positive disc herniation at L3-4. Claimant's personal physician then referred claimant to neurosurgeon Raymond Grundmeyer III, M.D.

After claimant was informed that the MRI examination revealed a herniated disc, claimant reported the condition to his new supervisor, Marcie Evans. Ms. Evans referred claimant to Boeing Medical and an Injury and Accident Report was completed on October

¹See K.S.A. 44-520 (Furse 1993).

13, 2000. In that report, claimant gave a history of carrying the cargo form and slipping on oil or some other fluid on the floor. In a letter dated November 8, 2000, respondent's insurance carrier denied claimant's claim for workers compensation stating as the reason claimant's failure to report the injury within 10 days as required by K.S.A. 44-520.

Claimant saw Dr. Grundmeyer on November 27, 2000. Claimant gave Dr. Grundmeyer a history of injuring his back while working for the respondent. After a lumbar myelogram, that revealed nerve root compression on the left L5 nerve root, Dr. Grundmeyer, on January 16, 2001, performed a left L4-5 laminectomy and microdiscectomy. The doctor found a free disc fragment herniation compressing the L5 nerve root with a disc herniation at L5 disc space. In an April 2, 2001, letter to claimant's attorney, Dr. Grundmeyer related claimant's development of low back pain in June 2000, and subsequent need for surgery to claimant's work activities he performed for the respondent.

The respondent had Lonnie Hack, claimant's supervisor at the time claimant slipped at work in June 2000, testify at the preliminary hearing before the ALJ. Mr. Hack did not recall claimant telling him he slipped on oil or fluid sometime in the latter part of June 2000. But since claimant did not report an injury at that time, Mr. Hack testified he would not have filled out a report of accident. Mr. Hack also testified that in his opinion while claimant was working for him claimant was honest. The ALJ asked Mr. Hack if he had any reason to doubt claimant's credibility. Mr. Hack replied, "No."

Respondent argues claimant failed to prove he gave sufficient notice of his work-related injury to respondent to satisfy the requirements of the notice statute. The Board interprets respondent's basic argument is the notice statute requires the claimant to not only notify the supervisor of the accident but also describe to the supervisor a specific injury. The Board has in previous decisions found that K.S.A. 44-520 does not require notice of injury, but rather notice of accident. The claimant is not required at the time he has a work related accident to diagnose his condition.²

The ALJ, in deciding the timely notice issue, specifically made a finding in the preliminary hearing Order that he did not doubt claimant's credibility. The ALJ had the opportunity to observe claimant testify and to personally assess his credibility. The Board finds some deference should be given to the ALJ's decision and thus affirms the ALJ's decision that claimant gave respondent timely notice of the work related accident that caused claimant's low back injury.

As previously noted, respondent in its application for review raised two other issues but did not argue those issues in its brief. The first issue was that claimant failed to prove that his low back injury arose out of and in the course of his employment with respondent. The Board concludes the ALJ's affirmative finding on this issue is supported by claimant's

² See Hernandez v. Montfort, Inc., WCAB Docket No. 208,012 (March 1997).

testimony and the medical opinion of Dr. Gundmeyer.

Additionally, respondent contends the ALJ exceeded his jurisdiction when he ordered respondent to pay all outstanding medical expenses as authorized medical because claimant failed to offer and have admitted into the preliminary hearing record the outstanding medical expenses. The preliminary hearing statute gives the ALJ the authority to grant or deny claimant's request for medical treatment at a preliminary hearing.³ Thus, the Board concludes that, at this stage of the proceedings, it does not have jurisdiction to review this preliminary hearing issue.

WHEREFORE, it is the finding, decision and order of the Board that ALJ Jon L. Frobish's April 5, 2001, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDER.

Dated this _____ day of August 2001.

BOARD MEMBER

c: Sean C. Brennan, Wichita, KS
Kim R. Martens, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

³See K.S.A. 44-534a(a)(2).